

REMARKS

Claims 1-66 are pending. All claims stand rejected. Claims 24, 65, and 66 have been amended. No new matter has been presented and entry of this Amendment is respectfully requested.

Indefiniteness rejections

Claims 24 to 41 and 66 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Office Action at pages 2-3.

Further to the Examiner's suggestions at page 2 of the Office Action, claim 24 has been amended to depend from claim 23 and claim 66 has been amended to recite the method of claim 65. Claim 65 has been amended to remove the word "said."

In light of the amendments to claims 24, 65, and 66, Applicants believe that claims 24 to 41 and 66 are now definite and the rejection rendered moot. Accordingly, withdrawal of the rejection under 35 U.S.C. § 112, second paragraph, is respectfully requested.

Anticipation, or in the alternative, obviousness rejections

Claims 1 to 66 stand rejected under 35 U.S.C. § 102(b), or in the alternative, under 35 U.S.C. § 103(a) as anticipated by or obvious over French Patent Application No. 2,795,953, to Dubief ("Dubief"). Office Action at pages 3-4.

According to the Examiner, Dubief discloses in Example 1 a cosmetic composition comprising lauryl ether sulfate with 2.2 moles of ethylene oxide,

cocoylbetaine, inulin, hydroxyethyl cellulose, polydimethylsiloxane, xanthan gum, and adjunct ingredients. Office Action at 3. Further, the Examiner asserts that the composition may also contain vitamins and may be used in a method of treating hair.

Id. at 3-4. The Examiner concludes that absent a full translation of the reference, claims 1-66 are anticipated by Dubief, or in the alternative, are obvious in light of Dubief.

Applicants submit herewith a certified full English translation of Dubief. Dubief is directed to cosmetic compositions comprising at least one conditioning agent and at least one cationic fructan in a cosmetically acceptable medium. Translation of Dubief, page 1, lines 4-7. Composition A in Example 1 discloses a composition comprising an anionic surfactant (sodium lauryl ether sulfate containing 2.2 mol of ethylene oxide), an amphoteric surfactant (cocoylbetaine), a cationic fructan (inulin quaternized with 3-chloro-2-hydroxypropyltrimethylammonium), as well as other ingredients. *Id.* at page 56, table at line 5.

In contrast, the instant claims require at least one anionic surfactant, at least one other surfactant, and at least one polysaccharide chosen from starch hydrolysates with a dextrose equivalent of less than 20 and *from nonionic and anionic* fructans. Dubief does not teach or suggest the use of at least one polysaccharide chosen from starch hydrolysates with a dextrose equivalent of less than 20 and from *nonionic and anionic* fructans. Instead, Dubief teaches the use of *cationic* fructans, particularly fructans comprising at least one amino group. *Id.* at page 2, lines 9-21. Accordingly, claims 1-66 are not anticipated by Dubief.

In addition to not being anticipated, claims 1-66 are not rendered obvious by Dubief either. To make a *prima facie* case of obviousness, an Examiner must cite a

reference or references which (a) disclose all the elements of the claimed invention, (b) suggest or motivate one of skill in the art to combine or modify those elements to yield the claimed combination, and (c) provide a reasonable expectation of success should the claimed combination be carried out. See, e.g., *Northern Telecom Inc. v. Datapoint Corp.*, 15 USPQ2d 1321, 1323 (Fed. Cir. 1990); and *In re Dow Chemical Co.*, 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988). Failure to establish any one of these three requirements precludes a finding of a *prima facie* case.

As stated above, Dubief does not disclose all of the elements of the claimed invention, i.e., specifically, at least one polysaccharide chosen from starch hydrolysates with a dextrose equivalent of less than 20 and from nonionic and anionic fructans. Further, the Examiner has not provided any suggestion or motivation as to why one of skill in the art would have substituted the cationic fructans of Dubief with an anionic or nonionic fructan. The Examiner merely states that "it would have nonetheless been obvious to the skilled artisan to produce the claimed composition, as the references teaches each of the claimed ingredients with the claimed proportion." Office Action at 4. In fact, Dubief teaches away from this substitution by emphasizing the importance of the cationic fructans. See translation of Dubief, at 2, lines 12-21. Finally, the Examiner has not provided any reasonable expectation of success that the nonionic and anionic fructans would function in the compositions of Dubief the same way as the disclosed cationic fructans.

Accordingly, claims 1-66 are not obvious over Dubief and withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested. In view of the foregoing

amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

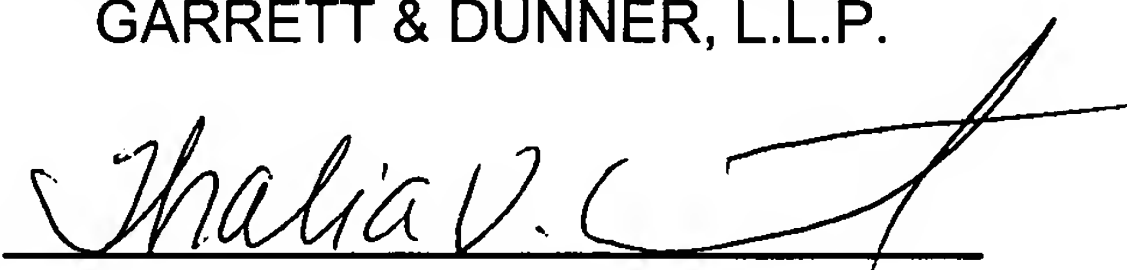
Please grant any additional extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: September 6, 2005

By:

A handwritten signature in black ink, appearing to read "Thalia V. Warnement", is written over a horizontal line.

Thalia V. Warnement

Reg. No. 39,064

Customer No. 22,852